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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-164

PASADENA CITY BOARD OF EDUCATION, et al.,

Petitioners,

vs.

NANCY ANNE SPANGLER, et al.,

Respondents,

and

UNITED STATES OF AMERICA,

Respondent.

RESPONSE OF RESPONDENTS, SPANGLER, ET AL., TO PETITION FOR WRIT OF CERTIORARI

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PEOPLE'S LOBBY PRESS LOS ANGELES

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Petitioners are members of a board of education which was found guilty of de jure segregation, ordered to desegregate pursuant to an approved plan, popularly known as the Pasadena Plan (311 F.Supp. 501 [1970]), and

who have done all in their power to discredit the plan and frustrate its chance of success. 375 F.Supp. at 1308.

Following the institution of the Court Order which the Board did not appeal, there followed a campaign by those dissatisfied with it, culminating in the present board membership, to resist the Pasadena Plan, although its thrust was simply to enjoin the Board members "from discriminating on the basis of race in the operation of the Pasadena Unified School District." 311 F. Supp. at 505. Rather than set about the business of encouraging the community to work for and support desegregation, the present Board membership campaigned for election upon such platforms as "Involuntary integration is self-defeating. It will not work!" (Exh. VI, p.2) or "minority children will be encouraged and assisted to attend schools outside their neighborhood

IF THEY VOLUNTARILY DECIDE TO DO SO" (IBID.),[1] and the slogan "STOP Forced Busing" was a hallmark of the campaign. (Exh. III, pp.1,2)[2]

Accordingly, petitioners are quite in error in contending that somehow the Pasadena District has become a unitary district.[3]

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1 Missing from such appeals to the votors was the suggestion that white students would be encouraged to attend schools outside <u>their</u> neighborhoods.

2 All against a background of the trial court's having found that segregated schools in Pasadena had come about largely as a result of the Board's rigid neighborhood school policy, its policy against forced busing plus an open enrollment or free choice plan which resulted in increasing segregation. <u>Cf Keyes v. School District No. 1</u> (1973), 413 US 189, 201-203.

3 It is significant that the petitioning school board members have been found in contempt of court for failing to carry out the provisions of the Pasadena Plan in the very important area of the selection of administrators. (<u>See United States v. Montgomery County Board of Education</u> (1969), 395 US 225, 231-2, recognizing that to achieve "a public school system wholly free from racial discrimination" desegregation of the staff is an important ingredient.)

(con'd next page)

Petitioners' failure or refusal to understand or acknowledge that this case deals with an intentionally segregated school district which has been ordered to desegregate and which has still not attained unitary status may account for their efforts to obtain review by this court, rather than setting themselves to the task of achieving unitariness. This is a case where the school board has resisted the desegregation order. There is no occasion for this Court at this point to interfere with the start that has been made toward desegregation.

Petitioners state with regard to the original order in this case, "The findings of violations were based not so much on affirmative acts of segregation by Petitioners, as on their failure to act to prevent 'racial imbalance.'" (Petition, p.3.) Not so. For

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That matter is presently on appeal before the court below. (No. 74-2530.)

example, when a "white" school was temporarily closed for repairs, the District transported that students three miles away to another "white" school, although five "black" schools, three of them with more unused capacity than the new school, were closer. 311 F.Supp. 501, 507. The examples are many. IBID. at 508.

In the same vein, petitioners state that since the institution of the Pasadena Plan it has been adhered to. (Petition, p.4.) Again, not so. In this delicate field where the success of desegregation depends so much upon the leadership given by those responsible for its effectuation, there is compliance and there is compliance. The trial court here found that "the Pasadena Plan has not had the cooperation from the Board." 375 F.Supp. at 1308. This is an understatement. It is amply supported by the record. Indeed, there was "vocal and active resistance." IBID., note 6. As the court said, "No one can now

estimate the possible results of the Pasadena Plan had it enjoyed the continued support of a Board who would act, as they profess, to 'do unto others as you would have done unto you.'" IBID.

Accordingly, petitioners' Question Number Three[4] assumes a non-existent premise, for there is no warrant for petitioners to claim that they have achieved a unitary system And until they do, and a court has so declared (this Court is not the forum for that determination), it would be improper to relieve the Board from the federal court's jurisdiction as it would be improper to have allowed petitioners' proposed alternative plan which predictably would lead the Pasadena system back to segregation, 375 F.Supp. at 1307, notes 9 and 12.

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[4] Inadvertently numbered 4. (Petition p.2.)

This is not the case to decide whether a freedom of choice plan is constitutionally acceptable. (Petitioners' Question Five.) As this Court said in Green v. County School Board of New Kent County (1968), 391 U.S. 430 440, if effective, it may well be acceptable. But Pasadena, this very school district, has had its experience with free choice and it did not work - - it was not effective. 311 F.Supp. at 510. The lower courts cannot be faulted for not allowing petitioners to reinstitute it.

Other questions presented by petitioners, e.g., one and two, are not properly before this Court. As Chief Judge Chambers, concurring in the court below, recognized, the posture of the case is not as though on appeal from the original decree. And surely the court below was correct in holding that it would be an abuse of appellate court power to upset the trial court in its determination

that there had not been a sufficient change in conditions to decree abandonment of the federal court's equitable powers. It will be time enough for that if and when such changes do occur. They have not yet. There is no occasion for this Court's intervention now.

Petitioners' question Four is similarly a non-existent issue. It is sophistic phraseology to the nth degree. Nothing in the trial court's order prevents petitioners from acting to prevent the school system from becoming all-minority. The difficulty with petitioners' attempting to frame a question which is not here is that they have not proved their point. As the Superintendent of Schools testified: the Pasadena Plan, though it may need some modifications, is preferable to the plan petitioners projected to the court in achieving an educationally sound plan for an integrated school system. 375 F.Supp. at 1308.

This in and of itself is sufficient support for the trial court's ruling, even had there been contrary evidence. And there was not. To paraphrase the Fifth Circuit in United States v. Hendry County School District, 504 F. 2d 550, 554 (1974): "We cannot tolerate resegregation of a former dual school system and the School Board of such a system must demonstrate that the new (plan) will not tend to promote that relapse." This, petitioners have not done. Indeed, the contrary has been shown.

CONCLUSION

The petition for writ of certiorari should be denied. Petitioners should be allowed (or required) to bend their efforts toward making the court decree work rather than to frustrate it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Fred Okrand, certify as follows:

I am an attorney at law duly admitted to practice before the Supreme Court of the United States, and am one of the attorneys for Respondents Spangler, et al herein.

On September 30, 1975, I served the within RESPONSE OF RESPONDENTS, SPANGLER, ET AL., TO PETITION FOR WRIT OF CERTIORARI on petitioners and on respondent, United States of America herein by placing threecopies thereof enclosed in a sealed envelope, with first class postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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I further certify that all parties required to be served have been served.

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